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## REGION 2 NEWS

### NJ Spotlight News: Plastic bag ban set to become law in NJ

Gov. Phil Murphy is said to be poised to sign a bill Wednesday that many call the nation's toughest ban on single-use plastic and paper bags, a step advocates call the most important way to end plastic pollution in the environment.

### Spectrum News: New Phase of Gowanus Canal Cleanup Bans Boating

Canoes are being tied up and taken out of the Gowanus Canal.

### Riverhead Local: Schumer demands Navy act quickly to bring public water to homes near the former Grumman site in Calverton

Sen. Chuck Schumer is urging the U.S. Navy to immediately develop a plan to connect homes near the former Grumman site in Calverton to public water.

### Newsday: Report: More water contamination found outside Bethpage ballfield

Cleanup of Bethpage Community Park's contaminated ballfield is underway, even as regulators learn the extent of newly identified Grumman pollution that could further delay the facility's full reopening.

### InsideEPA.Com: Energy Researchers Tout Improved Cost-Benefit Review For CO2 Policies

Energy researchers at Columbia University are touting what they describe as a better methodology that compares the actual carbon dioxide reductions different policies and technologies achieve for the money spent, in response to concerns that potentially costly decarbonization policies can have little real impact in reducing CO2 emissions.

### InsideEPA.Com: Environmental groups sue EPA over power plant ELG

A coalition of nine environmental groups is seeking judicial review of the Trump EPA's recently finalized effluent limitations guidelines (ELG) for steam electric power plants, saying the modification of Obama-era standards drastically weakens protections for human health and endangered species.

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The most anti-environmental court in the modern era

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## **REGION 2**

## **NJ Spotlight News**

<https://www.njspotlight.com/2020/11/nj-ban-single-use-plastic-bags-paper-bags-polystyrene-foam-food-containers-bill-murphy/>

## **Plastic bag ban set to become law in NJ**

Once Gov. Phil Murphy signs the measure, single-use paper and plastic bags will be outlawed

By Tom Johnson

November 4, 2020

Gov. Phil Murphy is said to be poised to sign a bill Wednesday that many call the nation's toughest ban on single-use plastic and paper bags, a step advocates call the most important way to end plastic pollution in the environment.

The Legislature approved the bill (S-864) after a long battle, including a veto of a previous measure two years ago by the governor who considered it too weak. It had been a top priority of environmental groups for the past few years.

The legislation had faced opposition from various business groups, but the move by more than 50 local communities to enact their own plastic bag bans, often differing in scope and intent, led some organizations to back a single, statewide standard instead. Eight other states have enacted statewide bans on single-use plastic bags, but none have included single-use paper bag prohibitions.

## **Polystyrene-foam products also banned**

Beyond the bans on single-use bags, which are largely confined to larger grocery stores, the law also prohibits polystyrene foam food-service products, typically used for carry-out food items, as well as limits on single-use plastic straws.

The bill includes many exemptions, among them for uncooked meat, poultry and fish wrapped in bags, prescription drugs from pharmacies and dry-cleaner plastic bags.

It establishes various times for the legislation to take effect, but generally the ban will not be effective for at least 18 months. The bill also allows for certain polystyrene manufacturers to obtain a waiver under certain conditions.

### **Plastic pollution**

Plastic bags emerged as one of the leading causes of pollution in the ocean and other environments in recent years, according to numerous global studies, as well as a local one addressing the Raritan River. The bags break down and cause harm to wildlife and marine fisheries.

“Plastic pollution is a crisis that we can’t fix with recycling,” said Jennifer Coffey, executive director of the Association of New Jersey Environmental Commissions. “This law will create a cleaner and greener New Jersey and will inspire other states to take much-needed action to reduce single-use plastic use and waste.”

Jeff Tittel, director of the New Jersey Sierra Club, said bans have proven effective in reducing plastic pollution, noting Los Angeles County saw a 94% reduction in single-use bags after restricting their use. “It is important that we will now have a statewide ban on plastics getting into our environment,” he said.

### **Not everyone backs ban**

Others were disappointed to hear the governor is signing the bill.

Dennis Hart, executive director of the Chemistry Industry Council, was unhappy about the prohibition on polystyrene-foam food containers, which he argued will lead to cheaper alternatives that are more harmful to the environment. Hart said he hopes those issues will lead lawmakers to consider changes to the law.

The legislation had been opposed by Republicans who argued it would impose new costs on many businesses, most of which have been hurt by the coronavirus pandemic.

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## **Spectrum News**

<https://www.nyl.com/nyc/all-boroughs/news/2020/11/03/new-phase-of-gowanus-canal-cleanup-bans-boating>

### **New Phase of Gowanus Canal Cleanup Bans Boating**

By Jeanne Ramirez

November 3, 2020

Canoes are being tied up and taken out of the Gowanus Canal.

Brad Vogel is the captain of the Gowanus Dredgers Canoe Club and said that, while the canoes are usually stored for the winter come November, this time it's different. That's because he doesn't know if they'll be back in the spring now that a new phase of the canal's cleanup is about to begin.

"These are steel bulkheads driven down to make sure the land does not cave into the canal when they take out about 10 to 12 feet of sediment down at the bottom," explained Vogel.

With that dredging of the canal, the U.S. Environmental Protection Agency is banning all boating and other recreational activities in the main channel of the Gowanus north of the Third Street Bridge.

The Canoe Club's landing lock is located right on Second Street and is expected be part of the shutdown. The Brooklyn Paper first reported on the ban.

"We call ourselves the Gowanus Dredgers," said club founder Owen Foote. "We want it dredged. So we really are out here to make sure that this happens. But not at the sake of putting us out of business. The number one thing that we are is a canoe club. If we cannot canoe, we fail in our mission."

Owen Foote founded the Gowanus Dredgers 21 years ago to connect Brooklynites to the long-neglected and ridiculed waterway and to raise awareness about the pollution plaguing it.

The 1.8 mile waterway is so toxic from decades of industrial dumping it is now a federal superfund.

The EPA says the dredging will start in mid-November and because the canal is narrow, it needs to halt all boating. But the canoe club says they can co-exist.

"We've been out here alongside barges and tugs and bulkheads and all sorts of things in the industrial waterway for many years," said Vogel. "And so we're definitely familiar with sharing the waterway with a variety of uses."

The club says it's presenting its argument to the EPA, and is hoping for a compromise, such as allowing recreational activities after the contractors finish for the day.

The feds say there are logistical issues and operating safely is the priority. But it's committing to an ongoing dialogue with the group. The cleanup work for this phase is expected to go into the summer of 2023.

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## **Riverhead Local**

<https://riverheadlocal.com/2020/11/03/schumer-demands-navy-act-quickly-to-bring-public-water-to-homes-near-the-former-grumman-site-in-calverton/>

### **Schumer demands Navy act quickly to bring public water to homes near the former Grumman site in Calverton**

By Denise Civiletti

November 3, 2020

Sen. Chuck Schumer is urging the U.S. Navy to immediately develop a plan to connect homes near the former Grumman site in Calverton to public water.

Schumer is also asking the Navy to "significantly expand" its investigation into toxic chemicals emanating from the facility, a former Naval Weapons Reserve Plant, where Northrop Grumman built and tested fighter planes for the Navy.

In an Oct. 28 letter to Secretary of the Navy Kenneth Braithwaite, Schumer said the Navy must act quickly in light of New York's tough new drinking water standards for the chemical contaminants 1,4 dioxane and per- and polyfluoroalkyl substances (PFAS) which have been detected on the former Grumman site in Calverton. There were "significant detections of PFAS" in nearby private wells, Schumer wrote. The Navy did not test private wells for 1,4 dioxane. New York's new drinking water standards took effect July 30, after the Navy

sampled nearby private wells. The Navy's monitoring of groundwater on the former Grumman's site is ongoing.

"This strong step from New York state casts a new shadow on the Navy's recent sampling of private drinking water wells and public monitoring wells near NWIRP Calverton because the results now exceed the state's standards for both PFAS and 1,4-dioxane," Schumer wrote.

PFAS chemicals, a group that includes PFOS and PFOA, are used to make fluoropolymer coatings and products that resist heat, oil, stains, grease, and water. They have been manufactured and used since the 1940s in products such as water-repellent clothing, furniture, adhesives, paint and varnish, food packaging, heat-resistant non-stick cooking surfaces and insulation of electrical wires. PFOS is used in fire-fighting foam.

The former Navy manufacturing facility in Calverton was occupied by the Grumman Aerospace Corp. (later Northrop-Grumman) from the early 1950s through the mid-1990s. The Navy began its assessment of environmental conditions at the site in the mid-1980s. When the federal government transferred the site to the Town of Riverhead in 1998, the Navy retained four noncontiguous parcels of land totaling about 335 acres inside the fenced 2,900-acre site due to environmental contamination.

The Navy in 1997 established a Restoration Advisory Board for community input into the site restoration process. The RAB has held public meetings once or twice a year to advise community members of the status of restoration. The RAB last met in January and has scheduled a meeting for Nov. 12 at 7 p.m. (The Nov. 12 meeting will be held virtually at <https://tinyurl.com/CALRAB1120>.)

"We're very happy Sen. Schumer is putting pressure on the Navy to do the right thing," Citizens Campaign for the Environment executive director Adrienne Esposito said in an interview today.

"The Navy has been an abject failure for public health protection. It's really been shocking," she said. "They did a cost-benefit analysis and it's cheaper to delay than clean it up. They do the same thing in Bethpage," Esposito said, referring to Long Island's other former Northrop Grumman manufacturing site, where two dozen toxic chemicals are present in a massive plume of contaminated groundwater.

"It's a pattern," Esposito said. "They polluted the groundwater and they refuse to test people's drinking water. It's totally unacceptable. They are an agency that's supposed to be protecting Americans, not poisoning them," she said.

A Navy spokesperson could not immediately be reached for comment.

Schumer's staff participated in a couple of roundtable discussions organized by Citizens Campaign for the Environment, where Esposito and community residents advocated for public water in the area south of the Calverton facility and for expanding the area of investigation into possible groundwater contamination by toxic chemicals emanating from the NWIRP/Calverton.

CCE gathered residents and key players, including the Suffolk County Department of Health Services, the Suffolk County Water Authority, a member of Rep. Lee Zeldin's staff, County Legislator Al Krupski and Riverhead Supervisor Yvette Aguiar to discuss getting public water to the residents in the area.

As a result, the county health department and the water authority teamed up to collect samples from private wells. The sampling was delayed by the pandemic but was begun in September. Lab testing is underway.

"We're waiting for the results," Esposito said. Officials expanded the sampling area, she said, which now takes in 160 homes.

Riverhead Town, which operates its own water district, in February took the first steps toward a possible extension of the Riverhead Water District to serve the areas south of the former Grumman site with public water. The town board, authorized the preparation of a map and plan for the extension by H2M Group, the water district's engineers.

Aguiar said today the map and plan have been completed and will be delivered to town hall this week.

The town took a proactive step, the supervisor said, so as to “allow for a much quicker hookup” for residents.

If sampling being done in the area reveals toxic chemicals in private wells the town will ask the Navy to pay for the extension, the supervisor said.

“If they refuse, the town will sue the Navy,” Aguiar said.

Manorville resident Kelly McClinchy, who has been asking the Riverhead Water District to bring public water to the area, said today residents there are very pleased that Schumer has reached out to the Navy again.

“It’s time the Navy starts listening to the residents,” McClinchy said.

“The residents didn’t cause this contamination. The efforts of Grumman in conjunction with the Navy did. The residents deserve to know they are drinking clean water,” McClinchy said. “It is time for public water to be extended to all the residents so they have that assurance.”

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## Newsday

<https://www.newsday.com/long-island/environment/ballfield-cleanup-in-bethpage-1.50055850>

### Report: More water contamination found outside Bethpage ballfield

By Paul La Rocco

November 3, 2020



Cleanup of Bethpage Community Park’s contaminated ballfield is underway, even as regulators learn the extent of newly identified Grumman pollution that could further delay the facility’s full reopening.

Grumman’s successor, Northrop Grumman, activated the long-planned system to heat and remove volatile organic compounds from ballfield soil on Aug. 26, marking the start of a six- to nine-month process. But that promptly was followed by a report from company consultants to the state Department of Environmental Conservation outlining results of new sampling from outside the ballfield, which has been closed since 2002.

The Sept. 28 report found volatile organics in soil at levels as high as 420 parts per million — more than 40 times the state’s target cleanup goals — beneath some areas of the adjacent parking lot and in one spot leading up to the nearby skate park.

"We'll definitely be requiring Grumman to do something about this," Martin Brand, deputy state environmental conservation commissioner, said in an interview.

He noted, however, that the newly discovered contamination isn't deemed an immediate public health threat because it is confined to a low permeability clay layer about 40 feet below the parking lot, which remains open.

"We think we've fairly well-delineated the area," Brand said. "It's not the whole parking lot."

The recent testing expanded on Northrop Grumman's findings late last year of soil contaminants of up to 150 parts per million in select areas just outside the previously designated ballfield cleanup boundaries. That discovery had frustrated residents and officials who wondered how regulators and the polluter were still grappling with the extent of the park's soil contamination after all these years.

Grumman donated the 18 acres of land that would become Bethpage Community Park to the Town of Oyster Bay in 1962. But it wasn't widely disclosed that a roughly 3.5-acre portion of the land — where the ballfield was built — had been the aerospace giant's chemical waste disposal site until 2002, when the soil contamination first forced the park's closure.

The park has come to represent the corporate and regulatory failures that created the larger groundwater contamination now spreading beneath Bethpage and surrounding communities. Newsday highlighted the site in a February investigation, "The Grumman Plume: Decades of Deceit," that detailed a history of deceptive statements, missteps and minimization that long slowed cleanup of the pollution that has become Long Island's most intractable environmental crisis.

"What they're finding is on town property, the more you look for something, eventually you're going to find it," Bethpage Water District Superintendent Michael Boufis said of the newly identified soil contamination beneath the park.

Brian Nevin, a spokesman for the Town of Oyster Bay, said in a statement that the town is reviewing the new data and working with the state and Northrop Grumman to "develop a cleanup strategy."

"This contamination will obviously take time to clean up," Nevin said, noting that the town, despite its input into the process, can only control so much. "If we ultimately do not agree with the final decisions, we always have the option [of] legal action."

All parties, however, at least see the progress in the ballfield's cleanup as good news. For many years, the blighted, overgrown area has been a symbol of Grumman pollution, fenced off from the remainder of the park, which largely reopened in the mid-2000s.

"Our data shows the system is operating effectively and we expect to operate the system until early to mid-2021," Northrop Grumman spokesman Tim Paynter said in a statement.

After the thermal well system has heated the volatile organic compounds and removed them to state standards, additional soil borings will be drilled to confirm its success. Once the soil has fully cooled, Northrop Grumman can begin excavating the toxic metals and polychlorinated biphenyls, known as PCBs, that also are still present.

"We remain committed to pursuing scientifically sound, targeted and effective remedial approaches that protect the health and well-being of the community and avoid unnecessary disruption," Paynter said.

An entire generation of children haven't had access to the ballfield, but officials, absent the parking lot problem, had envisioned a timeline that might allow the cleanup to be done by the end of next year, allowing the field to possibly return to public use by the 20th anniversary of its closure, in May 2022.

"It's a good milestone for the park," Brand said of the ballfield cleanup being underway in earnest.

That still leaves cleanup of the larger groundwater plume — now 4.3 miles long, 2.1 miles wide and as much as 900 feet deep. Boufis and the Bethpage Water District continue to push for the state to finalize an agreement

with Northrop Grumman and the U.S. Navy, which is also responsible for the plume, to begin work on an aggressive \$585 million containment and remediation plan.

In the meantime, the district also continues to push for the soil cleanup of the park, even though it's not directly related to the larger groundwater pollution.

"Some people say it has nothing to do with the Water District, so why are we being so vocal about it?" Boufis said. "But it has something to do with our community."

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## **InsideEPA.Com**

<https://insideepa.com/environment-next-news/energy-researchers-tout-improved-cost-benefit-review-co2-policies>

### **Energy Researchers Tout Improved Cost-Benefit Review For CO2 Policies**

November 2, 2020

Energy researchers at Columbia University are touting what they describe as a better methodology that compares the actual carbon dioxide reductions different policies and technologies achieve for the money spent, in response to concerns that potentially costly decarbonization policies can have little real impact in reducing CO2 emissions.

The new method comes as corporations and governments are adopting aggressive net zero approaches that add to the urgency of assessing the real costs and benefits of decarbonization approaches, according to the Columbia researchers, who cite limitations in the Paris climate agreement, electric vehicle (EV) subsidies, and other policies.

New climate change policies are vital but to be successful they "must lead directly to swift and profound abatement of greenhouse gas emissions," researchers from the Carbon Management Research Initiative at Columbia University's Center on Global Energy Policy say in [an Oct. 19 press release](#) announcing their new methodology. Known as the "levelized cost of carbon abatement" (LCCA), it provides a new tool for assessing CO2 policies and technologies.

"Governments, investors, and decision makers require better tools focused on understanding the real emissions impacts and costs of policies and other measures in order to design the most effective policies required to create a net-zero world," the release adds.

That same concern to ensure investments create real carbon abatement benefits underlies the strategy of a startup company, SilviaTerra, that is poised to launch a market for forestry carbon sequestration credits using the company's novel [high-resolution inventory](#) of all forests in the continental United States to ensure sequestration projects get real and immediate carbon results.

According to [the Columbia University report](#), "Levelized Cost of Carbon Abatement: An Improved Cost-Assessment Methodology for a Net-Zero Emissions World," previous methodologies to assess carbon reduction options incorporating marginal or levelized cost "often failed to consider the specific contexts that determine the real, all-in costs of a policy and the real, all-in impacts on emissions."

Columbia's LCCA builds on an understanding that "costs and impacts can vary depending on the contexts and details of geography, existing infrastructure, timing, and other factors."



It seeks to improve the understanding of “the real climate costs and benefits” of options by including “specific and local CO2 reductions” in all of its estimations and “consistently applying standard financial metrics that more accurately represent and compare costs.”

Taking those factors into account, the methodology calculates “how much an investment or policy costs on the basis of dollars per ton of emissions reduced.”

### **‘New Urgency’**

The report notes a “new urgency” regarding deep decarbonization that has been reflected in various corporate and governmental net zero commitments, including economy-wide net zero targets set by New York and California, as well as Microsoft’s policy of becoming “carbon negative” by 2050 by recapturing all of the company’s legacy emissions.

The rapidly proliferating corporate and governmental net-zero policies “share an aspect that’s relatively new -- actual reduction of CO2 and other greenhouse gases,” the report notes.

That demand for actual reductions “is very different from many nationally determined contributions” under the Paris accord, which “set targets for clean power rollouts and in some cases explicitly allow near-term emissions growth at a slower than previous rate.” Net zero commitments are also quite different from the United Nations Framework Convention on Climate Change goal of avoiding “dangerous anthropogenic interference with the climate system,” and the related topics of common but differentiated responsibilities, among other carbon-reduction schemes, including state renewable portfolio standards, the report says.

Since cutting CO2 emissions to net zero will be a “daunting and difficult task, it is reasonable for investors, business leaders, and policymakers to seek the most cost-effective approach to reducing CO2 emissions” and achieving the net zero goals, the authors write. Although many studies, mainly using macroeconomic modeling approaches, have sought to provide broad insights into cost-effective technologies and policies, governments and businesses have taken “specific near-term measures,” deploying capital and technology locally that have specific costs and benefits.

“Perhaps surprisingly, there is no common metric to assess technology and policy options,” the report says, and notes some common metrics used to consider alternative approaches, such as the levelized cost of electricity -- described in a Department of Energy presentation -- “do not directly measure actual or likely CO2 reductions,” the report says.

Common policy approaches such as EV subsidies “have clear associated costs but lack an understanding of the likely carbon abatement associated with implementation,” it finds. -- *David Clarke*

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### **InsideEPA.Com**

<https://insideepa.com/daily-feed/environmental-groups-sue-epa-over-power-plant-elg>

### **Environmental groups sue EPA over power plant ELG**

November 2, 2020

A coalition of nine environmental groups is seeking judicial review of the Trump EPA’s recently finalized effluent limitations guidelines (ELG) for steam electric power plants, saying the modification of Obama-era standards drastically weakens protections for human health and endangered species.

“We have won court rulings to clean up toxic coal plants before, and we won't let the progress be undone,” Thomas Cmar, deputy managing attorney for the Coal Program at Earthjustice, said in a Nov. 2 statement.

Earthjustice filed the suit, *Clean Water Action, et al. v. EPA*, on behalf of the environmental groups in the U.S. Court of Appeals for the District of Columbia Circuit. In addition to Clean Water Action, the other plaintiffs in the suit are the Center for Biological Diversity (CBD), Chesapeake Climate Action Network, Environmental Integrity Project (EIP), Natural Resources Defense Council, PennEnvironment, Prairie Rivers Network, Sierra Club and Waterkeeper Alliance.

EPA Administrator Andrew Wheeler signed the final rule Aug. 31, and it appeared in the *Federal Register* Oct. 13. The new rule revised the requirements in the 2015 rule for best available technology economically achievable (BAT) effluent limitations and pretreatment standards for flue gas desulfurization (FGD) wastewater and bottom ash (BA) transport water.

Agency officials including Wheeler have touted the rule's alleged pollution reductions at an increased cost savings, as well as citing the rule as a benefit to domestic energy. Wheeler said Aug. 31 the rule shows President Donald Trump's commitment to advancing American energy independence and protecting the environment.

But Hannah Connor, a senior attorney at CBD, in a Nov. 2 statement called the rule an “absurd step backward” that “is little more than a gift to the dirty fossil fuels industry at the expense of people's health, endangered wildlife and water quality.”

She added, “Many power plants could easily adopt affordable technologies that dramatically reduce toxic discharges, but with this rule, the EPA is telling their polluter friends not to bother with these common-sense measures.”

Abel Russ, a senior attorney with EIP, predicted the rule “won't stand up in court” because it “allows power plants to fall as low as the worst performers in the industry” contrary to the Clean Water Act's requirement for each industry sector to catch up with the best performers.

The litigation comes as House Democrats are pressing EPA to explain the agency's basis for the new ELG rule and how it expects facilities to comply.

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## NATIONAL

The most anti-environmental court in the modern era

<https://thehill.com/opinion/energy-environment/524177-the-most-anti-environmental-court-in-the-modern-era>

With the addition of Justice Amy Coney Barrett to the U. S. Supreme Court, it doesn't seem hyperbolic to predict that the Supreme Court will be the most anti-environmental court in the modern era.

Yet we need environmental protection now more than ever: intense hurricanes have bashed the Gulf and Atlantic Coasts all summer and fall, raging fires have set records throughout the West Coast, the Midwest has experienced catastrophic flooding and much of the country faces historic drought conditions. And that's just in the U.S.

Though Barrett's record on environmental issues is sparse, there are several reasons to believe she will join with her conservative colleagues to roll back environmental protection and to restrict environmental group access to the courts. First, she identifies herself as a follower of the late-Justice Antonin Scalia. Scalia routinely authored Supreme Court opinions and dissents to strike down environmental protections. He wrote the dissent in the

court's landmark decision *Massachusetts v. EPA*, which held that the Clean Air Act covers the regulation of the greenhouse gases that cause global warming.

Second, Barrett, like recent Supreme Court appointees Neil Gorsuch and Brett Kavanaugh, was on the Federalist Society's shortlist for Supreme Court appointees. The Federalist Society makes no secret of its commitment to a limited role for the federal government and deregulation.

And third, Barrett herself sent strong signals at her confirmation hearings that she is a climate skeptic. In response to questions about climate change, she claimed not to know much about the issue, saying she "isn't a scientist." That phrase is routinely used by politicians who oppose regulating carbon pollution. Even more tellingly, she called climate science "politically controversial" in response to Sen. Kamala Harris's (D-Calif.) questions. Scientists are unanimous in believing that greenhouse gases cause climate change. Regulating carbon pollution is controversial, not climate science.

With Barrett now confirmed, here are three ways the Supreme Court may limit environmental protection.

First, the conservative members of the court could overturn *Massachusetts v. EPA*. Were they to do so, the Environmental Protection Agency (EPA) would lose the most effective tool it has to cut greenhouse gas emissions from the electric power sector, from oil and gas drilling and from transportation. Even if the court preserves the holding of *Mass v. EPA*, it will almost certainly dramatically limit its reach by striking down ambitious EPA regulations issued under the Clean Air Act, upholding the case in name only.

Second, the court's majority may limit the ability of states and environmental groups to bring environmental lawsuits. In order to file a lawsuit challenging environmental regulations and policies, a plaintiff must establish "standing." In *Massachusetts v. EPA*, the dissenters, including Scalia, Justices Samuel Alito, Clarence Thomas and Chief Justice Roberts, would have denied *Massachusetts* the right to challenge EPA's refusal to regulate carbon pollution. If the dissenting justices had prevailed, their reasoning would have made it impossible for states or environmental groups to challenge any environmental regulation that concerns climate change. All environmental suits would be more difficult to bring. With Gorsuch replacing Scalia and the addition of Kavanaugh and Barrett, citizen access to the courts will be imperiled.

Biden, Trump, the Senate and lower court selection

Election observers on the ground in the US

Finally, in what would be by far its most radical move, the Supreme Court could revive a long-dormant doctrine — last used in the 1930s in opposition to the New Deal — to upend the power of federal agencies to do their jobs. Five of the current justices have signaled their interest in reviving what is known as the "non-delegation" doctrine. If Barrett joins them, six members of the court could begin striking down laws passed by Congress that give federal agencies like EPA, the Fish and Wildlife Service and the Occupational Health and Safety Administration (OSHA) the power and responsibility to implement federal law. Affected laws could include the Clean Air and Clean Water Acts, the Endangered Species Act, OSHA, the Affordable Care Act and many more. If the six conservative members of the court revive the non-delegation doctrine and use it expansively, the administrative state as we know it could come to an end.

It is not hyperbolic, as I stated earlier, to predict that the Roberts court, with new member Barrett, could be the most anti-environmental in history. Its anti-environmentalism couldn't come at a worse time. We are facing the gravest existential environmental threat in human history as carbon pollution continues to accumulate in the atmosphere. We have little time — just a few decades at most — to cut that pollution to zero to avoid the worst ravages of climate change. And yet we have a court that could stand in the way of what is already the hardest environmental task we have ever undertaken. Barrett's confirmation makes the possibility even greater.

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## EPA Announces One of Its Largest-Ever FIFRA Civil Settlements

<https://www.jdsupra.com/legalnews/epa-announces-one-of-its-largest-ever-52660/>

Beveridge & Diamond PC

### **Key Takeaways:**

**What Happened:** EPA settled with Electrolux for nearly \$7 million in connection with the import of household appliances with antimicrobial-treated air filters that were not registered under the federal pesticides law.

**Who's Impacted:** Manufacturers, distributors, and importers of products that incorporate antimicrobial substances or make antimicrobial claims.

**What Should Companies Do in Response:** Evaluate the regulatory status of any products that make antimicrobial claims to ensure compliance with federal registration, production, and recordkeeping requirements. Violations of these requirements may result in stop sale orders, product seizures, or civil penalties.

**By When:** As soon as possible.

The U.S. Environmental Protection Agency (EPA) last month announced one of the largest civil penalties ever issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In its October 6, 2020 Consent Agreement and Final Order (CAFO) with Electrolux Home Products, Inc. (Electrolux), EPA settled hundreds of alleged FIFRA violations in connection with Electrolux's import and distribution of approximately 420,000 dehumidifiers and air conditioners that each contained a filter manufactured with nanosilver. With a \$6,991,400 penalty, EPA's action is consistent with the Agency's continued enforcement focus on imported pesticides and also appears to reflect a trend toward significantly higher FIFRA civil penalty assessments in recent years.

Unless otherwise exempted under FIFRA, any pesticide product imported into the United States for distribution or sale first must be registered with EPA. In addition, imported pesticides must comply with specific production, labeling, and notification requirements under FIFRA. A "pesticide" is defined to mean "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest," and a "pesticide product" refers to the pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is distributed or sold. Under FIFRA, pests include microorganisms found on surfaces or in the air or water.

Significantly, the Electrolux products characterized by EPA as pesticides in this matter were not chemical products themselves. Instead, they were all household dehumidifiers and air conditioners, each of which contained a filter manufactured with nanosilver, which is an antimicrobial substance. As described in EPA's CAFO, the products were marketed with claims such as "cleans air by removing harmful bacteria" and "reduces bacteria . . . for a healthier, more comfortable environment." According to EPA, these appliances were intended to provide an antimicrobial benefit to users and, in light of the incorporated nanosilver, therefore required registration under FIFRA prior to their sale or distribution.

EPA's penalty calculation was informed by its FIFRA Enforcement Response Policy, which includes detailed guidance for computing FIFRA penalties based on case-specific factors. In its CAFO, EPA specifically notes that the \$6,991,400 penalty reflected a 20 percent "good faith" reduction of the gravity-based penalty amount, in acknowledgment of Electrolux's efforts to bring the products into compliance with FIFRA after EPA's discovery of the alleged violations. These efforts included an EPA-authorized "rework plan" that allowed Electrolux to consolidate its products at specified locations and, under the supervision of an independent monitor, systematically replace the products' nanosilver filters with filters that do not contain any pesticidal substances, and remove any pesticidal claims on the labeling and in associated marketing materials.

Manufacturers, Distributors, and Importers Should Assess FIFRA Product Compliance

In light of this latest enforcement action, importers, manufacturers, and distributors of products that incorporate antimicrobial substances or make antimicrobial claims should closely evaluate their status under FIFRA and confirm full compliance with EPA's requirements.

Determining FIFRA regulatory status requires careful assessment of each product's composition and claims, which should be frequently revisited as product design and marketing strategies change over time. Some product manufacturers and suppliers may not be aware that they are subject to FIFRA in the first place. While certain products containing antimicrobial substances may be eligible for exemption under FIFRA as "treated articles," those that do not meet all of EPA's applicable criteria remain at enforcement risk. In addition, products that do not contain any antimicrobial substances at all may still be subject to regulation under FIFRA as "pesticidal devices" if they are intended to operate against pests by physical or mechanical means.

[\[View source.\]](#)

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#### Cin-Air ordered to pay \$90K fine for jet fuel spill

<https://highlandcountypress.com/Content/In-The-News/Headlines/Article/Cin-Air-ordered-to-pay-90K-fine-for-jet-fuel-spill/2/73/61294>

Cin-Air LP pleaded guilty and was sentenced in U.S. District Court last month for violating the Clean Water Act by causing and mishandling a jet fuel leak in March 2019 at Lunken Airport.

The company was sentenced to one year of probation and ordered to pay a \$90,000 fine. As part of its probation, the company will provide training to all employees on spill prevention and cleanup. It will also publish a full-page acknowledgment of its conduct in Business Air's FBO Today.

According to the plea document, on March 21, 2019, Cin-Air's fuel pump at the Lunken Airport airplane hangar was inadvertently left running overnight after a mechanic refueled an airplane.

A safety switch called the "dead man switch" had been previously altered with a zip tie, causing the switch to permanently stay in the open position.

When Cin-Air employees reported to work the morning of March 22, they discovered the fuel pump had been running all night and leaking. It was estimated that more than 3,000 gallons of fuel had spilled from the pump during the night.

Cin-Air never notified to the National Response Center and waited approximately six hours before notifying the Cincinnati Fire Department. Before calling the fire department, company employees washed down the spill area with water into a nearby storm sewer.

Emergency crews traced the fuel spill to a cove of the Little Miami River. No jet fuel was observed in the main river channel.

Efforts were made to contain and clean up the spill, and it is estimated 1,700 gallons of fuel were recovered. Cin-Air contributed approximately \$220,000 toward nearly \$440,000 in cleanup costs.

"The defendant's negligence resulted in a fuel spill that contaminated the Little Miami River, a tributary of the Ohio River," said Special Agent in Charge Jennifer Lynn of EPA's criminal enforcement program in Ohio. "Today's sentencing demonstrates that EPA and our law enforcement partners are committed to enforcing laws designed to protect the health of our communities and our natural resources."

David M. DeVillers, United States Attorney for the Southern District of Ohio; Jennifer Lynn, Special Agent in Charge, United States EPA criminal enforcement program; Laurie A. Stevenson, Director, Ohio EPA; Ohio

Attorney General Dave Yost and Cincinnati Fire Chief Roy E. Winston announced the sentence imposed by U.S. Magistrate Judge Stephanie K. Bowman. Assistant United States Attorney Kyle J. Healey and Department of Justice Environmental and Natural Resources Division Trial Attorney Adam Cullman are representing the United States in this case.

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[EPA awards approximately \\$90m to address water infrastructure in Massachusetts](#)

<https://www.nsenergybusiness.com/news/epa-awards-approximately-90m-to-address-water-infrastructure-in-massachusetts/>

The U.S. Environmental Protection Agency (EPA) has announced funding to the Commonwealth of Massachusetts totaling more than \$90 million for major water infrastructure projects in communities across the state. As part of the overall funding, EPA is announcing significant amounts to address lead in drinking water in schools in Boston, and schools and childcare facilities in communities across Massachusetts.

In two annual amounts, EPA is awarding the Commonwealth of Massachusetts nearly \$54 million for the Clean Water State Revolving Fund (CWSRF), and more than \$25 million for the Drinking Water State Revolving Fund (DWSRF). This funding is available for a wide range of water infrastructure projects, including modernizing aging wastewater infrastructure, addressing stormwater, and to improve drinking water infrastructure. EPA is also helping Massachusetts prioritize projects that remove sources of lead in drinking water by facilitating a one-time transfer of \$30 million from the state's CWSRF to its DWSRF for lead-related, DWSRF-eligible projects.

In addition to these sums, EPA is announcing significant grant funding to address lead in drinking water in schools in Boston, and schools and childcare facilities in communities across Massachusetts. The Commonwealth of Massachusetts Clean Water Trust will receive \$3 million, and Boston Public Schools will receive \$6.2 million. These were among the first-ever selections under the Water Infrastructure Improvements for the Nation Act's (WIIN) Reduction in Lead Exposure via Drinking Water grants, which will be used to assist schools and childcare facilities in disadvantaged communities by installing thousands of water fountains and bottle filling stations in hundreds of schools and childcare facilities throughout Massachusetts.

"Especially during Children's Health Month, EPA is proud to further support our state and local partners' critical work to reduce childrens' exposure to lead levels in drinking water by replacing water fountains and installing filtered bottle filling stations which work to Get the Lead Out," said EPA New England Regional Administrator Dennis Deziel. "These projects will result in tangible and lasting benefits by significantly advancing health protections for children, our most vulnerable population, with a focus on Boston and disadvantaged communities across Massachusetts."

"As Chair of the Clean Water Trust, I am very happy with the successful results of our partnership with the EPA and MassDEP. Our continuing collaboration ensures the opportunity for clean drinking water throughout our entire state," said Massachusetts State Treasurer Deborah Goldberg. "Children's Health Month is a wonderful opportunity to educate everyone on the expanded resources available to protect the health and safety of our kids."

"Reducing lead in drinking water is a priority for the Commonwealth and the funding announced today by the EPA will be a tremendous resource as we work to protect public health all across the state," said Massachusetts Department of Environmental Protection (MassDEP) Commissioner Martin Suuberg. "With these funds, we can expand our testing program and sample over 600 more schools and childcare facilities, partner with the Clean Water Trust to install more than 1,200 filtered water-bottle filling stations at schools and childcare centers, modernize our aging wastewater infrastructure and improve drinking water systems across Massachusetts."

“We are so appreciative of this incredible grant, which will build on prior investments to provide cleaner, healthier school environments and improve equitable drinking water access for Boston Public Schools students, families, and staff,” said Boston Public Schools (BPS) Superintendent Brenda Cassellius. “This funding will help BPS continue to meet state and federal guidelines, reduce environmental impacts, accommodate school preference for filtered bottle refill stations, and promote the overall health and well-being of our community.”

Source: Company Press Release

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### [Commissioner Nikki Fried Submits Testimony to EPA on Florida Clean Water Act](#)

<https://www.tampafp.com/commissioner-nikki-fried-submits-testimony-to-epa-on-florida-clean-water-act/>

Commissioner Nikki Fried submitted written testimony on the State of Florida’s request to assume administration of the Clean Water Act’s Section 404 program from the U.S. Environmental Protection Agency (EPA). In her comments, Commissioner Fried noted her concerns with the Florida Department of Environmental Protections’ (DEP) proposal, highlighting the fact that the only other two states which have assumed permitting authority struggled to adequately implement the program.

“Given the value of the water resources and wetlands to the citizens of our state, any delegation of permitting authority to DEP must contain assurances that existing levels of protection of the natural resources will be preserved and that sufficient resources are available for DEP to implement regulatory programs in an efficient and effective manner,” Commissioner Fried stated in the written testimony.

“Without those assurances, DEP will face the same fate as Michigan and New Jersey, the other two states that have assumed 404 permitting authority and required remediation of their state programs due to struggles in maintaining the required levels of regulatory integrity and resources to adequately implement the program.”

The complete written testimony, which was submitted online, can be read below.

Context: On August 20, the EPA received a request from Florida to take over the administration of the Clean Water Act’s (CWA) Section 404 program to regulate the discharge of dredged or fill material into waters within the jurisdiction of the state. In the 43 years since the CWA was amended to provide for state assumption, only two states have assumed administration of the Section 404 program, Michigan and New Jersey. Last week, Commissioner Fried shared her concerns with this proposal.

Florida is the first state to submit a complete package requesting to administer the program since 1994. As part of the review process, the EPA asked for input from other applicable agencies, reviewing Florida’s proposed program for consistency with the CWA, and seeking public comments to be submitted on or before November 2, 2020 and held two virtual public hearings on October 21 and 27.

Background: Section 404 of the CWA requires a permit before dredged or fill material may be discharged into waters of the United States, and provides states and tribes the option of assuming, or taking over, the permitting responsibility and administration of the Section 404 permit program for certain waters. Section 404 permits for those assumed waters would be issued by the state or tribe instead of the U.S. Army Corps of Engineers.

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### [EPA awards funds to address water infrastructure in Massachusetts](#)

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By Rachel Wagoner - November 3, 2020

People who live in small, rural communities know the importance of groundwater. More than 70% of community water systems serving 10,000 or fewer people are groundwater-supplied, according to the U.S. Environmental Protection Agency.

On top of that, 34 million people live in communities that rely on private wells.

So when it comes to stormwater discharge and the pollutants it can bring into groundwater, small towns are more at risk and often have fewer financial resources or expertise to protect their drinking water, according to the National Ground Water Association and the Groundwater Protection Council.

“The federal government should be doing more or looking harder at ways to help these small communities manage their stormwater,” said Ben Frech, public relations manager with the National Ground Water Association.

The two groups are urging the U.S. Environmental Protection Agency to support funding for communities that need help managing their stormwater and helping find ways to reuse that stormwater.

They sent a joint letter to EPA Administrator Andrew Wheeler Oct. 19 in response to the Proposed 2020 Financial Capability Assessment for Clean Water Act Obligations that was released in September.

## **Background**

The EPA requested comment on an overhaul of the Financial Capability Assessment methodology used to determine a community’s ability to fund its Clean Water Act obligations. This is the first update to the tool in more than 20 years.

Under the Clean Water Act, municipalities and other entities like universities, hospitals or prisons are required to control their stormwater so that it does not pollute waters of the U.S., however, it’s an unfunded mandate. It’s up to communities to figure out how to manage stormwater systems and how to pay for them.

Stormwater is runoff from the land or impervious surfaces, like paved roads, parking lots and rooftops. While it’s necessary for refilling underground aquifers that supply groundwater, stormwater can also carry with it a number of pollutants like road salt, oil and grease from roadways, sediment, pesticides, manure and other garbage it picks up along the way.

## **The problem**

The National Ground Water Association and the Groundwater Protection Council said in their comments that the EPA’s Financial Capability Assessment tool needs to take into account the cost of groundwater protective design in stormwater systems and small communities’ limited technical and financial abilities to put those measures in place.

The groups said some communities may opt for least cost or “insufficient methods” of stormwater management and disposal that won’t adequately protect groundwater.

“Costs for treating contaminated groundwater to be a water supply source may far exceed the cost of adequately designed and constructed stormwater measures that are protective of groundwater quality,” the groups said in their letter.

Additionally, if stormwater can be collected and treated, it can be injected back into the ground to recharge aquifers, Frech said. None of this work can be done, though, without proper funding.

The National Ground Water Association, based in Columbus, is a trade association representing more than 10,000 groundwater professionals in the U.S. and internationally. The Groundwater Protection Council, based in Oklahoma City, is an organization of state ground water regulatory agencies.

The EPA's request for comments and proposed changes to the Financial Capability Assessment garnered 67 comments by the time the comment period closed Oct. 19.

The EPA proposed two approaches for its updated Financial Capability Assessment. The first expands the metrics that go into the calculations, giving more consideration to costs, poverty and debt in a community. The second approach would be more dynamic and consider the impact of rate increases over time on utility customers.

(Reporter Rachel Wagoner can be contacted at 800-837-3419 or [rachel@farmanddairy.com](mailto:rachel@farmanddairy.com).)

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### **Amid dicamba uncertainty, Enlist soybeans may be a popular option**

<https://www.duluthnews Tribune.com/business/agriculture/6741603-Amid-dicamba-uncertainty-Enlist-soybeans-may-be-a-popular-option>

Written By: Emily Beal | [Mikkel Pates](#) | Michelle Rook | Nov 3rd 2020 - 8am.

With harvest winding down, producers may begin thinking about their 2021 planting season. With the fate of Dicamba looming, many producers are now deciding to plant Enlist soybeans in their acres.

Just as peak spraying season hit in 2020, the Ninth Circuit Court of Appeals threw a monkey wrench into the plans of soybean growers, and those complications seem likely to persist into 2021.

The Ninth Circuit on June 3, vacated the registrations of three dicamba herbicides — Bayer's Xtendimax, BASF's Engenia and Corteva's FeXapan. That created some level of chaos for farmers who had expected to spray dicamba on their soybeans. Over the weeks that followed, some states maintained that farmers could spray existing supplies of dicamba.

The EPA on Oct. 27 announced it would approve new registrations for XtendiMax with VaporGrip Technology and Engenia Herbicide and extended the registration for Tavium Plus VaporGrip Technology. The registrations will expire in 2025.

But with all the turmoil, it's not surprising that producers in the region are considering their options for soybean seed and contemplating using options that provide for more flexibility in what products get sprayed over the top. Enlist soybeans, already popular in the region in 2020, look likely to pick up even more market share, particularly in the eastern third of North Dakota and South Dakota where resistant weeds have emerged more aggressively.

Since dicamba was approved for postemergence use on soybeans, there have been issues with off-target drift affecting crops not resistant to the herbicide. In its findings in June, the Ninth Circuit found that EPA substantially understated or failed to consider the environmental and economic costs of dicamba use when it registered the products. And across the region, regulators continued to see complaints about damage from the herbicide in 2020.

North Dakota regulators received 11 formal dicamba complaints in 2020, up from five a year ago. Dicamba injuries in the state were overwhelmed by a "fantastic growing season," where beans recovered quickly, said Andrew Thostenson, North Dakota State University Extension pesticide application specialist.

Thostenson believes there was dicamba damage that people didn't turn in. He also thinks dicamba damage may have delayed the maturity of some beans, leading them to be more susceptible to damage from a strong early September frost.

"We haven't had actual reports on that, so I'm just guessing," Thostenson said.

Minnesota regulators received 124 complaints of "alleged" damage in 2020, said Allen Sommerfeld, senior communications officer for the Minnesota Department of Agriculture. He said 69 requested a formal investigation. The investigations are ongoing, so details aren't open to the public.

There had been 22 complaints in Minnesota in 2019. Thostenson thinks Minnesota may have had more problems in 2020 because they "actually had weather conditions that allowed them to spray" while in 2019, they'd had so much excessive moisture that farmers weren't able to get out and spray before the cutoff dates.

Regulators with the Iowa Department of Agriculture and Land Stewardship count "growth regulator" allegations, based on injury symptoms. The state takes samples and analyzes residues; some come back inconclusive because they can't find residues. In 2020, there were 215 "growth regulator" complaints, compared to 132 in 2019, said Bob Hartzler, an Iowa State University Extension weed scientist at Ames, Iowa.

Keely Coppess, communication director for the Iowa Department of Agriculture and Land Stewardship, said that of the 215 growth regulator reports, 57 had been confirmed to be over-the-top applications of dicamba on tolerant soybeans, and six were confirmed to be over-the-top applications of 2, 4-D on tolerant soybeans.

Hartzler said more Iowa farmers went to "straight dicamba" products in 2020 than in other years. He is "convinced" that spraying dicamba in corn caused more impacts than previous years. That's in part because cornfields with resistance problems were resprayed later in the season than is typical and because corn and soybeans got planted so quickly that their treatments overlapped in timing.

Brian Walsh, public affairs director for the South Dakota Department of Agriculture and the state Department of Environment and Natural Resources, said "it is not the practice" of the agencies to keep record of pesticide complaints by specific active ingredients. The state saw a "sharp decline in reported incidents related to dicamba" after requiring more training and using a statewide cutoff date for dicamba use, he said.

Rather than relying solely on dicamba products, many farmers appear to be looking at different technology, including Enlist soybeans, that allow for other products to be sprayed.

Enlist E3 soybeans are genetically modified to provide resistance to 2,4-D choline, glufosinate and glyphosate. Enlist varieties have grown in popularity for producers all around the country. Stuart Carlson, with Hoegemeyer Hybrids, said Enlist E3 has been a hot topic among growers in southeast South Dakota, northwest Iowa, and northeast Nebraska.

"Weed control was fantastic, and there is definitely a lot more flexibility spraying Enlist products," he said.

"Enlist has been out for a couple years. It is a great herbicide tolerant program and we had a pretty high percentage of our customers last year begin transitioning to the Enlist platform," said Carl Peterson, president of Peterson Farms Seed in Fargo, N.D.

What makes Enlist so appealing to many producers is its ability to withstand dicamba. If a producer's soybean field catches any dicamba drift, their soybean crop will not be zapped or altered.

"The issues with dicamba application and now with no label, has made it difficult for a lot of growers. In a lot of areas, the growers have tried a little bit of Enlist, and they have liked the varieties they have had. They like the overall weed control and it has been simpler to use," Peterson said.

Enlist soybeans have become a viable and popular choice for producers, and some varieties will have tight supplies. (Jaryn Homiston / Agweek)

However, Enlist is not one-size-fits-all, and Peterson suggests farmers survey their fields and their present weeds before making their choice on the seed variety they choose.

“There's a lot of discussion about which trait platform has the best yields. The traits don't yield differently; it's actually the underlying genetics. The farmer needs the genetics that fit his field, and he also needs a trait package that fits the way he farms to control the weeds that he has. So, we need all of these platforms and all of these tools, but Enlist has been a really good platform for a lot of the weed species for farmers to control,” Peterson said.

With the huge demand, the question will be whether there are enough seeds to go around.

Steven Senyak, retail product agronomist for Brevant Seeds, covers northern South Dakota into southern North Dakota, recommends farmers who are interested in Enlist soybeans book early. Supplies of early maturing varieties are “still looking pretty good,” but he expects them to continue tightening.

Carlson anticipates good seed supplies for slightly later maturing seeds used in his area.

“We’ve been gearing up for this. I don’t think I’ve seen a trait launch to this degree in my career. In my region, we had over 50% adoption to Enlist soybeans, which is huge, and I know we have geared up to supply much larger quantities,” Carlson said.

Pioneer field agronomist Larry Osborne said Enlist E3 was most effective for farmers in the eastern Dakotas, where farmers have resistant weeds like mare's tail and water hemp. Farther west in South Dakota where kochia is more of an issue, Osborne says many farmers will be sticking with the Xtend system, which allows use of either glyphosate or dicamba.

XtendFlex soybeans, which are genetically modified to be tolerant to glyphosate, dicamba and glufosinate, are likely to be popular, too.

“We're going to have a pretty decent supply of XtendFlex soybean varieties to get going on a first round launch. Overall in the United States, it's probably going to be approaching 60% of what we're selling now in the Xtend lineup. The early varieties always kind of lag behind in the program, but we're hoping in the next year or two we'll keep adding some new genetics there too,” said Derek Crompton, Channel technical agronomist.

Crompton is pleased with the yield performance they have seen when conducting trials on XtendFlex soybeans, even in tough environments for Iron Deficiency Chlorosis.

While companies expect XtendFlex to be a popular item for producers, they still anticipate Enlist varieties to be flying off their shelves.

Peterson Farms Seed anticipates a big demand for Enlist varieties in the 2021 planting season. (Jaryn Homiston / Agweek)

“There is no question that Enlist is going to take a very significant chunk of the acres across this region in 2021. That is absolutely going to happen. Demand has been strong. And with the brand new varieties, there's never enough, because you can't physically ramp up supply that much. We have a very good supply. We anticipated a strong move towards Enlist and of course we produced to meet that demand,” Peterson said.

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[California Attorney General Continues to Push EPA to Complete Required Evaluation of Pesticide Toxic to Pollinators, like Bees, Critical to Agriculture](#)

Last Updated: Tuesday, 03 November 2020 05:40

Published: Tuesday, 03 November 2020 05:40

November 3, 2020 - SACRAMENTO – California Attorney General Xavier Becerra on Monday urged the Environmental Protection Agency (EPA) to revise and recirculate its draft risk assessment of flonicamid, a pesticide toxic to pollinators like bees which are critical to agriculture. Despite evidence showing that flonicamid poses a higher risk to pollinators than previously understood, the EPA has repeatedly failed to collect data from required follow-up studies and continues to move forward with the registration process despite significant information gaps. Earlier this year, Attorney General Becerra expressed concern over the EPA's [risk assessment](#) and manufacturer ISK Biosciences' [application for new uses](#) of flonicamid. In today's comment letter, Attorney General Becerra once again urges the EPA to review the forthcoming follow-up studies, revise its ecological risk assessment, propose any necessary mitigation, and circulate its findings for public comment prior to issuing a registration decision.

"The Trump Administration's EPA is failing at one of its most basic jobs by plowing ahead with the registration process for flonicamid before receiving additional data on its impact to pollinators like bees," said Attorney General Becerra. "California relies on pollination from bees for agriculture, a driving force of our state's economy. We cannot ignore the environmental and economic implications of this decision – and the EPA cannot ignore its responsibilities under the law. The EPA must do its homework before it allows flonicamid to be used for another 15 years."

Under the Federal Insecticide, Fungicide, and Rodenticide Act, all pesticides must receive regulatory approval from the EPA before they are put into use. The EPA reviews pesticide registration every 15 years to ensure registration is based on current information regarding the health and environmental impacts of a pesticide's use. Many pesticides, including flonicamid, have come under increasing scrutiny in recent years for their adverse health and environmental effects. Flonicamid is a pesticide that manages crop pests by preventing them from eating, causing insects to die of starvation or dehydration. New studies submitted by ISK show that the application of the pesticide to crops exposes bees to up to 51 times the amount of flonicamid that would cause them substantial harm, posing significant risks to these pollinators.

Flonicamid's potential adverse effects on pollinators are of critical concern in California, where pollinators play a critical role in the environment and the economy. Pollination by native bees increases the United States' agricultural output by more than \$3 billion each year, and over a [third of the country's vegetables and two-thirds of the country's fruits and nuts are grown in California](#). Studies show that crop yields increase substantially in areas with denser native bee populations. Yet studies also show that California's major agricultural regions, such as the Central Valley, have experienced some of the steepest declines in native bee populations anywhere in the country.

On September 2, 2020, the EPA released a Proposed Interim Registration Review Decision for flonicamid that again failed to include and consider additional, required pollinator studies necessary for a registration decision. While the EPA claims that ISK has committed to conducting these studies, it has not committed to reviewing the data from these studies before issuing a final interim decision. In the comment letter, Attorney General Becerra argues that the EPA must gather the necessary data, describe flonicamid's risks to pollinators, and recirculate its draft ecological risk assessment before re-registering flonicamid.

A copy of the comment letter can be found [here](#).

Source: CA. DOJ

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## **Lawsuit challenges EPA re-approval of Atrazine**

<https://krvn.com/agricultural/lawsuit-challenges-epa-re-approval-of-atrazine/>

BY NAFB News Service | November 3, 2020

Public-interest groups sued the Environmental Protection Agency last week over its decision to reapprove atrazine. The groups claim atrazine is linked to birth defects and cancer in humans.

The lawsuit contends that the agency failed in its legal duty to ensure that the pesticide would not cause unreasonable harm to public health and the environment. An attorney for the Center for Food Safety says, “We are in court to make sure EPA answers for its blatant disregard of the lives of our nation’s farmworkers and their children.”

The lawsuit also challenges the EPA’s re-approvals of two other pesticides in the triazine class, which were part of the same review process as atrazine. Farm groups welcomed the September re-approval announcement made in Missouri.

At the time, Missouri Natural Resources Department Director Carol Comer stated, “EPA is using sound science to make decisions that protect children and workers, provide predictability and flexibility for our agricultural producers, and protect the environment.”

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## **Final clean-up plan for Wilmington Olin site won’t be ready until 2021**

<https://www.lowellsun.com/2020/11/03/final-clean-up-plan-for-wilmington-olin-site-wont-be-ready-until-2021/>

By [STEFAN GELLER](#) | [sgeller@lowellsun.com](mailto:sgeller@lowellsun.com) | Lowell Sun

November 3, 2020 at 8:32 a.m.

WILMINGTON — Over two months after the Environmental Protection Agency presented a proposed clean-up plan for the Olin Chemical site in Wilmington, Section Chief Lynne Jennings recently informed the Board of Selectmen that the agency doesn’t expect to issue its final plan until the end of 2020 or in early January.

“I’m certainly glad to see that we are moving in the right direction” said Town Manager Jeff Hull. “This has been an issue for my entire 30-year time in Wilmington, so it’s good that we’re at a point where decisions about remediation are being made.”

Located at 51 Eames St., Olin Chemical was a 53-acre facility that produced specialty chemicals for rubber and plastics until 1986. Waste disposal practices caused contamination both on and off-site, prompting the town to close contaminated drinking water wells and municipal supply wells in the Maple Meadow Brook aquifer.

In August, Jennings led a virtual presentation on the EPA’s proposed clean-up plan and highlighted the agency’s three proposed action items — one short-term and two long-term — to correct six problem areas that she said need to be addressed.

Those problems include contaminated surface water, soils and sediments in the East and South Ditch streams, groundwater hot spots and the need to remove contaminants like Dense Aqueous-phase Liquid (DAPL).

The short term action item would address the DAPL and groundwater hot spots by implementing approximately 26 extraction wells and constructing an onsite treatment system.

The long term items would include demolishing plant B, targeting groundwater extraction to prevent discharge to surface water and creating containment caps and cover systems on areas of soil contamination that pose an unacceptable ecological risk.

Jennings said in August that the EPA chose their plan based on nine points of criteria, including cost, implementability and, naturally, effectiveness. Overall the proposed plan is estimated to cost over \$48 million.

Still, there currently is no estimation for when the clean-up process will begin, according to Hull.

When speaking to the Sun, Hull said that he has some reservations about the proposed plan — particularly on the short-term solution to remove the DAPL — but ultimately feels glad that some progress is being made.

Still, he said that the progress doesn't change the fact that the town hasn't lost sight of the purpose for the clean-up.

“Even though it's going to take a considerable amount of time, we expect that the public water supply that was contaminated will at a point in time be fully restored,” Hull said. “Whether that takes 20 years or 50 years who knows, but that is still our ultimate goal.

The project update came as EPA officials met with the Board of Selectmen to inform the town about some upcoming investigative work around the Olin site.

Specifically, Jennings and James Cashwell, Olin's director of Environmental Remediation, said that they will be using a low-flying helicopter equipped with an electromagnetic sensor to identify the impacts of contaminants to bed rock and fill in certain data gaps, which will occur sometime next week.

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## **EPA Announces the Issuance of an Advisory on UV Lights That Claim to Kill or Be Effective against Viruses and Bacteria**

<https://www.natlawreview.com/article/epa-announces-issuance-advisory-uv-lights-claim-to-kill-or-be-effective-against>

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Tuesday, November 3, 2020

On October 30, 2020, the U.S. Environmental Protection Agency's (EPA) Office of Enforcement and Compliance Assurance (OECA) announced that it issued a Compliance Advisory on ultraviolet (UV) lights claiming to kill or be effective against viruses and bacteria.

EPA states that the Advisory was issued to provide an explanation to the UV light industry that UV lights are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as pesticide devices when sold or distributed with claims to kill or be otherwise effective against viruses and/or bacteria, unless an exception applies, and must comply with certain statutory and regulatory requirements. This is the second Compliance Advisory issued by EPA relating to UV light devices, as an Advisory issued in May 2020 entitled “What You Need to Know Regarding Products Making Claims to Kill the Coronavirus Causing COVID-19” also addressed in part whether UV light devices could make claims against the coronavirus.

The Advisory reiterates that UV lights sold or distributed with claims that the lights can be used for preventing, destroying, repelling, trapping, or mitigating any pests, which include plants, animals, viruses, bacteria, or other micro-organisms, are regulated by EPA under FIFRA as a device. UV lights without such claims would not be subject to FIFRA. According to the Advisory, pesticidal devices are subject to certain regulatory requirements under FIFRA, one of which is a prohibition of false or misleading labeling claims.

The Advisory answers the following questions:

How do I comply with FIFRA if I am selling or distributing a UV light with pesticidal claims?

Devices do not need to be registered by EPA and, therefore, are not subject to a pre-market review by EPA (although some states require devices to be registered). However, federal regulations require devices to be produced in an EPA-registered pesticide producing establishment and there are production reporting requirements; see 40 C.F.R Part 167.

Devices must be labeled per federal regulations at 40 C.F.R Part 156. Generally, device labels must include warning and caution statements, directions for use and the EPA establishment number, amongst other label requirements. A description of device label requirements can be found at <https://www.epa.gov/pesticide-registration/pesticide-registration-manual-chapter-13-devices#labeling>.

All claims in connection with the sale or distribution of a device must be true and not misleading. FIFRA Section 12(a)(1)(F) specifically prohibits false or misleading labeling (known as misbranding); this includes claims made in marketing materials and on websites. Examples of misbranding are provided at 40 C.F.R 156.10(a)(5) and include, but are not limited to, false or misleading statements concerning product effectiveness (known as efficacy), claims about product safety, false or misleading comparisons with other pesticides or devices, or any statement directly or indirectly implying that the device is recommended or endorsed by any agency of the Federal Government. Companies are advised to maintain records, with information and data, to substantiate that claims made in regard to devices are not false or misleading.

In addition to FIFRA requirements, importers of all FIFRA-regulated devices must comply with the U.S. Customs and Border Protection (CBP) regulations set forth at 19 C.F.R. §§ 12.110 -12.117. Regulated entities that are importing UV pesticide devices are advised that the products being imported must be in compliance with FIFRA prior to entry into the United States. The EPA regularly coordinates with CBP to identify and reject violative UV pesticide devices at the port of entry.

Can a UV light be a pesticide requiring EPA registration?

Yes. If the UV light product incorporates a substance or mixture of substances to perform its intended pesticidal purpose, then it is considered a pesticide product, not a device, and must be registered with EPA in accordance with FIFRA Section 3 before it can be lawfully sold or distributed in the United States.

Are UV lights safe and effective?

Unlike chemical pesticides, EPA does not routinely review the safety or efficacy of UV light devices and, therefore, EPA has not conducted a human health risk assessment to determine the safety of these products. For the same reason, EPA cannot confirm whether, or under what circumstances, UV light devices might be effective against any pest, including viruses and bacteria. The effectiveness of any UV light device will depend on a variety of factors including, but not limited to, the device's duration of use, distance of the light from the surface intended to be treated, the UV wavelength, the specific pest being targeted, the strength or wattage of the UV light bulb, the age of the UV light bulb, shadow areas or other factors.

Consumers are advised to use all pesticidal devices ONLY in accordance with the Directions for Use, which are required to appear on the product label. EPA recommends that consumers contact the manufacturer or seller of the pesticidal device directly if they have any questions about how to use the product, the product's safety, or the product's efficacy.

What are the compliance concerns related to UV lights?



There may be members of the UV light industry who are unfamiliar with FIFRA and may not be aware of statutory and regulatory requirements. For example, they may be unaware that it is a violation of FIFRA to sell or distribute pesticidal UV light devices that are misbranded or that have not been produced in an EPA-registered establishment. EPA has been receiving complaints that UV light devices may be in violation of FIFRA. These complaints are being reviewed and EPA intends to pursue enforcement, as appropriate. See EPA's May 2020 compliance advisory on products making claims to kill the coronavirus that causes COVID 19 at <https://www.epa.gov/sites/production/files/2020-05/documents/coronavirus-compliance-advisory.pdf> and any subsequent updates.

Regulated entities of any size who voluntarily discover, promptly disclose, expeditiously correct, and take steps to prevent recurrence of potential violations may be eligible for a reduction or elimination of any civil penalties that otherwise might apply. To learn more about the EPA's violation disclosure policies, including conditions for eligibility, please review EPA's Audit Policy website at <https://www.epa.gov/compliance/epas-audit-policy>. Most violations can be disclosed and processed via EPA's automated online "eDisclosure" system - <https://www.epa.gov/compliance/epas-edisclosure>. Many states also offer incentives for self-policing; please check with the appropriate state agency for more information.

Are you unsure if your product is a device under FIFRA?

EPA has developed a guide concerning pesticide devices that explains what a pesticide device is and how it differs from a pesticide product which requires registration. This guide may be helpful to UV light manufacturers who need to determine if their product is regulated by FIFRA. See <https://www.epa.gov/safepestcontrol/pesticide-devices-guide-consumers>. If you are still uncertain about whether your UV light product is a device, you may submit a request for a Device Determination from EPA. Instructions for submitting a request can be found at: <https://www.epa.gov/pesticide-registration/pesticide-registration-manual-chapter-13-devices#obtain>.

## Discussion

UV light devices are a heightened focus of EPA, whose import and enforcement officials have been reviewing materials (e.g., import documents, websites) related to devices and increasingly bringing enforcement actions against companies for FIFRA violations. These actions can address circumstances when a pesticide device is not produced in a registered establishment or when the label does not include certain requirement elements, but more recently EPA seems particularly interested in the claims that are being made with regard to these devices and whether those claims are "false and misleading" under EPA's regulations.

Ensuring that claims related to the efficacy of the device are not considered by EPA to be "false and misleading" can be especially difficult based on the facts that EPA does not review and approve data that support the claims being made, and also that EPA has not historically provided guidance as to the type of data that it would require to support an efficacy claim for a pesticide device. This Advisory is interesting to the extent that EPA sets forth various factors to be considered when determining the effectiveness of a UV light device. These factors include, but are not limited to "the device's duration of use, distance of the light from the surface intended to be treated, the UV wavelength, the specific pest being targeted, the strength or wattage of the UV light bulb, the age of the UV light bulb, shadow areas or other factors." The May 2020 Advisory further states that "UV lights and other pesticide devices may not be able to make claims against coronavirus where devices have not been tested for efficacy or safety for use against the virus causing COVID-19 or harder-to-kill viruses." (Emphasis in original.) In light of the two advisories, it is critical for pesticide device producers to review carefully the data supporting the claims made for their devices to ensure that they comply with the regulatory requirements under FIFRA.

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## Group alleges sewage discharges into Sakonnet Harbor

<https://www.newportri.com/story/news/local/2020/11/03/group-alleges-sewage-discharges-into-sakonnet-harbor/6089025002/>

By Sean Flynn

Newport Daily News

3 Nov 2020

LITTLE COMPTON – An environmental group has filed a complaint with the federal Environmental Protection Agency claiming that sewage is being regularly discharged into Sakonnet Harbor, the site of the high-end Sakonnet Point Club.

Public Employees for Environmental Responsibility says it filed the complaint with the EPA because the Rhode Island Department of Environmental Protection has failed to take action on citizens' complaints of sewage clouds in the water from an illegal pipe discharge or other discharges, and sewage odors coming from the water.

"Sakonnet Harbor should be an ecological gem for the entire region, not a dumping ground for sewage," said New England PEER Director Kyla Bennett, a scientist and attorney formerly with EPA, in a written statement when the complaint was filed. The group is based in Boston, Massachusetts.

"Despite complaints made to DEM and the Rhode Island Department of Health about alleged illicit discharges of sewage from the Sakonnet Point Club to Sakonnet Harbor, the data provided to DEM did not show a violation of water quality criteria," said DEM spokeswoman Gail Mastrati in a written statement on Friday. "To date, DEM and RIDOH have found no evidence of sewage discharges into this water body."

Six months of water samples from the harbor that were collected and analyzed in 2019 by a laboratory show high levels of enterococci contamination, the bacteria associated with human waste, PEER says.

Enterococci are bacteria that live in the intestinal tracts of warm-blooded animals including humans.

"Although enterococci indicate the potential presence of sewage, the source can be any other mammal or birds," Mastrati said.

"Abutters and concerned citizens have repeatedly contacted DEM regarding possible unauthorized discharges at/or near Sakonnet Point Club, beginning in at least March of 2019, to no avail," the complaint says. There is a reportedly sealed pipe at another location in the harbor that also may be responsible for sewerage discharges, the complaint says.

DEM has responsibility for enforcing the federal Clean Water Act, but under the law, EPA can step in to take enforcement action if the state has avoided its responsibilities.

"DEM's Office of Compliance and Inspection performed multiple inspections in response to complaints received about the alleged discharge of sewage into Sakonnet Harbor," Mastrati said in her statement. "As a result of four inspections conducted between 2012 and 2019, DEM could not identify any unauthorized discharges to the harbor."

Inspections at the Sakonnet Point Club in August 2012 and December 2018 were unfounded, as well as inspections of Acme Sanitary Service in May 2019 and Sakonnet Marina in October 2019, she said.

"The complaint falls within the jurisdiction of DEM," said Antonio Teixeira, Little Compton's town administrator. "We don't have the resources to investigate that."

He said the PEER complaint caught him by surprise, although he has heard complaints of a pipe discharging into Sakonnet Harbor before.

He said he was interested in the laboratory results and hoped they had been sent to DEM.

According to the complaint, a concerned citizen hired BAL Laboratory in Cranston to test enterococci at three locations in Sakonnet Harbor, plus a control at South Shore Beach, the town's public beach.

Samples were collected every week from the beginning of March 2019 through the end of August 2019, the complaint said.

Sakonnet Harbor is classified as SA (b) waters, meaning they are designated for shellfish harvesting for human consumption and recreational activities, and are a fish and wildlife habitat. The "b" indicates partial use designation because the waters are in the vicinity of marinas or mooring fields, and are subject to seasonal shellfishing closures.

Under the law, the water should not have more than 35 colony-forming units of enterococci bacteria per 100 milliliters on average, and no single sample of more than 104 colony-forming units per 100 milliliters.

The table included in the complaint that lists the lab results shows both these values were exceeded on multiple days throughout the testing period.

"The weeks that have extremely large (sample) results are likely deliberate dumping events, either by a boat discharging sewage from its marine toilet, or where there is an unauthorized discharge from the Club or another entity on shore," the complaint says.

"The discharge from the club is from a reverse osmosis treatment system used to remove salt from the club's drinking water wells, and there has been no evidence of sewage in this discharge," Mastrati wrote.

Both the PEER group and Mastrati noted that. DEM issued a Notice of Violation to the Sakonnet Point Club in 2009 for failure to install a discharge pipe in accordance with approved plans. The club has since rectified that violation.

Teixeira said neither he nor the Town Council had been formally notified about the complaint and he never heard of the PEER group.

Founded in 1996, Public Employees for Environmental Responsibility includes environmental and public health professionals, land managers, scientists, enforcement officers and other civil servants working to protect the environment, according to its website. Through PEER, public servants can choose to work as "anonymous activists" and the group serves as a resource to potential government whistleblowers, the website says.

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